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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No. CV-07-5944-SC
MDL No. 1917

This Document Relates to:

ALL INDIRECT-PURCHASER ACTIONS

**DECLARATION OF SYLVIE K. KERN
IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS'
OPPOSITION TO PHILIPS AND
TOSHIBA DEFENDANTS' MOTIONS
FOR PARTIAL SUMMARY
JUDGMENT AGAINST INDIRECT
PURCHASER PLAINTIFFS WHO ARE
NATURAL PERSONS RESIDING IN
CALIFORNIA**

Date: February 6, 2015

Time: 10:00 a.m.

Place: Courtroom 1

The Honorable Samuel Conti

DECLARATION OF SYLVIE K. KERN IN SUPPORT OF IPPS' OPPOSITION TO PHILIPS & TOSHIBA
DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT AGAINST IPPS WHO ARE
NATURAL PERSONS RESIDING IN CALIFORNIA
MASTER FILE NO. CV-07-5944-SC, MDL NO. 1917

1 I, Sylvie K. Kern, declare as follows:

2 1. I am an attorney duly licensed to practice in the State of California and
3 before this Court. I am one of the attorneys representing the indirect purchaser plaintiffs in
4 this litigation. I also represent Jeffrey Figone, the objector and appellant in the *parens*
5 *patriae* proceedings against the Philips entities (“Philips”). I have personal knowledge of
6 the facts set forth herein, and could and would be competent to testify thereto if called
7 upon to do so.

8 2. The exhibits listed below are excerpts of the court records in *The State of*
9 *California v. Chunghwa Picture Tubes, Ltd., et al.*, Superior Court of California, County of
10 San Francisco, No. CGC-11-515786.

11 3. Attached as **Exhibit A** are true and correct copies of pages 1:14-15, 10:6-7,
12 15:7-8, and p.16:17-22 from the California Attorney General (“AG”)’s Reply to
13 Opposition of Objector Jeffrey Figone to Motion for Final Approval of the Settlement,
14 dated October 29, 2013.

15 4. Attached as **Exhibit B** is a true and correct copy of page 5:22-24 of Philips
16 Electronics North America Corporation (“PENAC”)’s Reply Brief in Support of Plaintiffs’
17 Motion for Preliminary Approval of the Chunghwa and Philips Settlements and
18 Certification of Settlement Class of Government Entities, dated Preliminary Approval of
19 dated April 2, 2013. The document states: “PENAC has consistently maintained its
20 position that the proposed Settlement extinguishes the federal claims, though it recognizes
21 the Plaintiffs [the State of California] maintain an opposite view.”

22 5. Attached as **Exhibit C** are true and correct copies of pages 1-2 of the Sur-
23 Reply of Objector Jeffrey Figone in Opposition to Motion for Final Approval of Philips
24 Settlement, dated November 25, 2013.

25 6. Attached as **Exhibit D** are true and correct copies of the objections and
26 exclusions filed by Messrs. Figone and Ganz, attached as Exhibit B-6 to the Declaration of
27

1 Emilio Varanini in Support of Motion and Motion for Final Approval of The Chunghwa
2 and Philips Settlements, dated September 23, 2013.

3 7. Attached as **Exhibit E-1 and E-2** are, respectively, true and correct
4 excerpts of the transcript of the hearing on final approval of the settlement held on
5 December 5, 2013, attached as Exhibit 1 to a letter from Emilio Varanini to the Hon.
6 Richard Kramer, dated December 17, 2013. The relevant excerpts are the following
7 statements by the trial court:

- 8 • “I have no idea what the scope of that release is, and it’s
9 impossible for me to figure it out”; [p.77:18-20]
10 • “What about the opt-out, the effect of a purported opt-out on
11 behalf of a class and the argument, perhaps by the litigant here,
12 that that’s not effective under the *parens patriae* statute? I’m
13 not going to determine that now.” [p.78:11-19]

14 8. The appeal relating to the Action has not yet been briefed. Mr. Figone
15 intends to argue that the notice was deficient because consumers were unable to make
16 informed decisions about whether to opt out.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed
18 on December 22, 2014 at San Francisco, California.

19
20 /s/ Sylvie K. Kern

21 Sylvie K. Kern
22
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EXHIBIT A

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ELECTRONICALLY

FILED
*Superior Court of California,
County of San Francisco*

OCT 30 2013
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

THE STATE OF CALIFORNIA, et al.;

Plaintiffs,

v.

**CHUNGWA PICTURE TUBES, LTD., et
al.,**

Defendants.

Case No. CGC -11-515786

[Related to Case No. CGC-11-515784]

**CALIFORNIA'S REPLY TO
OPPOSITION OF OBJECTOR JEFFREY
FIGONE TO MOTION FOR FINAL
APPROVAL OF THE PHILIPS
SETTLEMENT**

Date: December 5, 2013
Time: 9:30 a.m.
Dept: 303
Judge: Richard A. Kramer

Action Filed: November 8, 2011

(REDACTED VERSION)

**Pursuant to Government Code section 12652, subdivision (c)(8)(D)(iii) and
California Rules of Court, rule 2.573(a)(1) and (d)**

1 I. INTRODUCTION

2 Objector Jeffrey Figone is objecting only to the Attorney General's release of the claims
3 belonging to natural persons with respect to Philips. As to this release, he represents that he
4 would withdraw his objection "should the Court determine that the release does not encompass
5 the Class Claims"; otherwise, he asserts that the settlement with Philips is not fair, adequate and
6 reasonable. But he does not object to the settlement with Chunghwa, even though the Attorney
7 General settled not just the government class claims but also her *parens patriae* claims on behalf
8 of natural persons under the Cartwright Act as well as her law enforcement claims under the UCL
9 and unjust enrichment for restitution of overcharges to natural persons, and even though the
10 Attorney General settled those claims for a huge discount that recognized cooperation, litigation
11 risk, and the presence of injunctive relief. Rather, Mr. Figone's attorney represented that there is
12 no objection to the settlement with Chunghwa because he already settled Objector's own claim
13 and, in his representative capacity, class claims against Chunghwa.

14 Mr. Figone's objection should be overruled on the following grounds: (1) the language of
15 the release itself does not, on its face, encompass class claims, should a class be certified in
16 another case, as has happened here; (2) by legislative design, Attorney General settlements are
17 presumed fair, adequate and reasonable; (3) the settlement with Philips is in fact fair, adequate
18 and reasonable.

19 Ample consideration supports the release as to Philips. Recent developments, including (1)
20 the permission obtained to disclose an action by United States Department of Justice, Antitrust
21 Division ("USDOJ")—known by the Attorney General before entering into the proposed
22 settlements, and (2) an economic analysis provided by the Attorney General's expert, further
23 demonstrate that the Attorney General's early settlements are fair, adequate and reasonable.
24 Moreover, these settlements expressly leave room to hold the remaining cartel participants jointly
25 and severally liable for the sales of both Chunghwa and Philips. The proposed settlements
26 therefore warrant final approval regardless of how the release is construed, just as the Chunghwa
27 settlement is fair and reasonable beyond just the fact that Objector Figone in his class
28 representative role also settled his class claims against Chunghwa.

comparable to the consideration provided by Chunghwa for the same release, but Mr. Figone is not objecting to the release or any part of the proposed settlement as to Chunghwa. This lack of objection can be explained only by the fact that Objector Figone has already settled with Chunghwa, but not yet with Philips. And with respect to Philips, he, in fact represents that he will withdraw his objection if the release of the *parens patriae* claim does not cover his Class Claims. (Opp. at 2:3-7.) Inasmuch as the release as to Philips cannot and in fact does not cover the Class Claims, the objection should be disregarded as inapposite. In any event, however, due consideration further supports final approval of the Philips Settlement.

In approving the settlement, “[t]he most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) The court should “ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Id.* at 129.) To make this determination, “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.) “*Kullar* does not, as [objector] claims, require any such explicit statement of value; it requires a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Id.* at 309.) The record here supports granting final approval under this standard.

A. The Record Supports the Presumption of Fairness as to the Philips Settlement.

The Attorney General’s pre-suit investigation provides sufficient information upon which to enter into the proposed settlement with Philips. It is true, as Objector Figone observed, that the Attorney General initiated her formal investigation of Philips pursuant to Government Code sections 11180 *et seq.* in 2011. (Opp. at 15; see also 4/2/13 Supplemental Reply re: Preliminary Approval at 6-7.) But the information obtained from this section 11180 investigation was not

C. Only *Parens Patriae* Claims (As Opposed to Class Actions) Are Released By the Philips and Chunghwa Settlements Though Those Settlements Are Fair and Reasonable Regardless of the Scope of the Release.

The scope of the release, as set out in the Attorney General's settlement agreement with Philips and Chunghwa, and in her settlement complaint with both, encompasses the Attorney General's *parens patriae* claims for overcharges and deadweight loss to natural persons under the Cartwright Act and her law enforcement restitutionary claims for those overcharges under the Unfair Competition Law ("UCL") and unjust enrichment. It does not cover class claims under those causes of actions,⁵ where, as here, there is a certified class. First the Philips Settlement Agreement states on its face that the Attorney General is releasing only the claims she filed in her capacity as the State's Chief Law Enforcer and as "*parens patriae*." (11/26/12 Varanini Decl. ¶ 6. Ex. B, Philips Settlement Agreement at p. 1.) The agreement specifically defines "Releasor" specifically in terms of the Attorney General's chief law enforcement and *parens patriae* capacity: "'Releasor' refers to (1) the State of California in its own behalf...; (2) the State acting *parens patriae* on behalf of all natural persons resident in California any time during the Relevant Period." (11/26/12 Varanini Decl. ¶ 6. Ex. B, Philips Settlement Agreement at p. 4.) The Release says nothing on its face about releasing class action claims in the event that there is a certified class; nor is a class action on behalf of natural persons under any of these theories alleged in the settlement complaint.

That is important. First, with respect to the Attorney General's claims under the **Unfair Competition Law and the doctrine of unjust enrichment**, "a judgment for restitution secured by the Attorney General does not have any collateral estoppel effect on private actions for restitution." (*Payne v. Nat'l Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1047.) This is because:

An action brought pursuant to Business and Professions Code section 17200 et seq. by a prosecutor is fundamentally different from a class action or other representative litigation. Unlike private litigants, the Attorney General has statutory authority to sue under the UCL and need not demonstrate standing. The Attorney General need not certify a class in order to recover on behalf of

⁵ Deadweight loss cannot be obtained in a class action as Objector Figone admits. (See Opp. at 1-3:11 and 8-13:2.)

1 individuals. In addition, a UCL action brought by the Attorney General lacks the
 2 fundamental attributes of a consumer class action filed by a private party. The
 3 Attorney General or other governmental official who files the action is ordinarily
 4 not a member of the class, his role as a protector of the public may be inconsistent
 5 with the welfare of the class so that he could not adequately protect their interests
 6 and the claims and defenses are not typical of the class.

7 (*In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal., Feb. 15, 2011, C 07-1827 SI) 2011
 8 WL 560593 at *6 [citing Cal. Bus. & Prof.Code § 17204; Civ. Code, § 1781; *People v. Pacific*
 9 *Land Resources Co.* (1977) 20 Cal.3d 10, 18; *Payne v. Nat'l Collection Systems, Inc.* (2001) 91
 10 Cal.App.4th 1037; *Blue Cross of California, Inc. v. Superior Court* (2009) 180 Cal.App.4th 1237,
 11 1249, mod. on denial of reh'g, rev. den. (2010); see also Varanini Reply Decl. ¶ 16-17; 6/26/12
 12 California's Supplemental Reply to Defendants' Supplemental Brief on Defendants' Demurrer
 13 following Hearing per Order of the Court, filed in related case CGC-11-515784 ("6/26/12 Supp.
 14 Brief Opposing Demurrer").) The same rationale applies to Attorney General actions for unjust
 15 enrichment. (See Varanini Reply Decl. ¶ 16-17; see also 6/26/12 Supp. Brief Opposing Demurrer;
 16 *Borden, supra*, 347 U.S. at 518 ["These private and public actions were designed to be
 17 cumulative, not mutually exclusive. ... Different policy considerations govern each of these.
 18 They may proceed simultaneously or in disregard of each other."])

19 Second, with respect to the **Cartwright Act** claims brought as *parens patriae*, there is
 20 nothing in the statute itself or in the legislative history that provides the Attorney General with the
 21 power to release class claims in the event that a class is certified solely through her *parens*
 22 representative role. As discussed extensively above in Section II of this Memorandum, a class
 23 action serves a different function and role than does a *parens patriae* action with neither having
 24 the power to supplant the other. Rather, as discussed above, the only remedy from the
 25 perspective of a defendant for multiple settlements or verdicts involving both a class action and a
 26 *parens patriae* action is an offset.

27 Though the Attorney General provides her view of the scope of the release she effectuated
 28 to aid this Court in its review of the proposed settlements, she maintains that these settlements are
 fair and reasonable regardless of how the scope of the release is construed by this Court.

1 **V. CONCLUSION**

2 For the reasons stated here and in the underlying Motion, the Court should grant final
3 approval of the proposed settlements with Defendants Chunghwa and Philips.

4 Dated: October 29, 2013

Respectfully Submitted,

5 KAMALA D. HARRIS
6 Attorney General of California

7 /s/ Emilio E. Varanini
8

9 EMILIO E. VARANINI
10 Deputy Attorney General
Attorneys for Plaintiffs

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(...continued)
25 sufficient.”].) However, to the extent Objector is really seeking abstract guidelines from this
26 Court concerning the Attorney General’s authority to release her *parens patriae* claims, or the
27 scope of such release, for use in pending and future cases,” that also is an improper de facto
28 request for an advisory opinion and should be denied. (See *Southern California Edison Co. v.*
State Farm Mut. Auto Ins. Co. (1969) 271 Cal.App.2d 744, 747.[“[I]t is well established that
courts do not give advisory opinions.”])

EXHIBIT B

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ELECTRONICALLY

FILED

*Superior Court of California,
 County of San Francisco*

APR 03 2013

Clerk of the Court
 BY: VANESSA WU
 Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO

THE STATE OF CALIFORNIA, et al.; and

**THE CITY AND COUNTY OF SAN
 FRANCISCO, individually, and on behalf of
 all others similarly situated,**

Plaintiffs,

v.

**CHUNGHWA PICTURE TUBES, LTD., et
 al.,**

Defendants.

Case No. CGC-11-515786

[Related to Case No. CGC-11-515784]

**PHILIPS ELECTRONICS NORTH
 AMERICAN CORPORATION'S REPLY
 BRIEF IN SUPPORT OF PLAINTIFFS'
 MOTION FOR PRELIMINARY
 APPROVAL OF THE CHUNGHWA AND
 PHILIPS SETTLEMENTS AND
 CERTIFICATION OF SETTLEMENT
 CLASS OF GOVERNMENT ENTITIES**

[CRC 3.766 and 3.769; Bus. & Prof. Code §
 16760(c)]

Date: April 5, 2013
 Time: 9:30 a. m.
 Dept: 303
 Judge: Hon. Richard A. Kramer

Action Filed: November 8, 2011

1 The two objectors raise a litany of objections regarding the content and dissemination of the
 2 proposed settlement notice,⁵ (Opp’n Br. at 3-7), but the gravamen of their argument is that the
 3 proposed notice is “ambiguous” because it does not state definitively whether the proposed
 4 settlement will extinguish the federal claims. (*See id.* at 4 (“either the claims are released or they
 5 are not”).) Thus, the two objectors assert that the proposed notice should be revised to inform
 6 California residents that “they will relinquish their rights to cover under the ongoing federal
 7 putative class action” unless they opt out of the proposed Settlement. (*Id.* at 5.) This proposal is
 8 illogical, of course, because the potential impact of this proposed Settlement with regard to the
 9 asserted claims of a putative class in the federal action cannot possibly be known until this
 settlement is approved and its impact is adjudicated in the separate federal action.

10 Furthermore, the purported “ambiguity” in the proposed notice is merely a contingency that
 11 is inherent in the “live legal question” regarding the effect of the proposed settlement on the
 12 pending claims in federal court and is not an issue for this Court to resolve. (*See generally*
 13 *Washington v. Chimei Innolux Corp.*, 659 F.3d 842 (9th Cir. 2011) (distinguishing multi-state
 14 class actions, which are subject to federal jurisdiction, with *parens patriae* claims, which are
 15 not).) Thus, as this Court recognized at the January 8, 2013 hearing, the proper approach to the
 16 proposed notice is to inform California residents that they “*could* be waiving your right to some
 17 or all of your damages[.]” (Varanini Decl., Ex. A, at 54:1-13 (emphasis added).) Providing an
 18 absolute statement of rights (as the two objectors propose) that are necessarily contingent would,
 19 in fact, itself be misleading. Indeed the present circumstances is entirely equivalent to informing
 20 California residents that by remaining in the class they will relinquish their right to pursue an
 individual claim that **may** result in recovery of damages. There is inherent uncertainty in every
 settlement, which the two objectors try to pass off as “ambiguity.”

21 The two objectors’ accusation that PENAC is “lying in the weeds” because the notice
 22 states that Philips “may” seek dismissal of the federal claims is similarly unfounded. PENAC has
 23 consistently maintained its position that the proposed Settlement extinguishes the federal claims,
 24 though it recognizes the Plaintiffs maintain an opposite view. However, whether PENAC takes
 25 action in the federal case is another uncertain future event that is best characterized by the word
 26 “may.” For example, PENAC “may” not need to seek dismissal of the federal claims because the
 indirect purchasers “may” be unable to certify their class due to an inability to show common

27 ⁵ *See* Plaintiffs’ Reply Brief in Support of Preliminary Approval for a complete rebuttal of the two
 28 objectors’ claims.

1 Dated: April 2, 2013

Respectfully Submitted,

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ELECTRONICALLY

FILED

Superior Court of California,
 County of San Francisco

NOV 27 2013

Clerk of the Court
 BY: VANESSA WU
 Deputy Clerk

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION**

THE STATE OF CALIFORNIA, et al.; and)	Case No. CGC-11-515786
THE CITY AND COUNTY OF SAN)	
FRANCISCO, individually and on behalf of)	SUR-REPLY OF OBJECTOR FIGONE
all others similarly situated,)	IN OPPOSITION TO MOTION FOR
)	FINAL APPROVAL OF PHILIPS
Plaintiffs,)	SETTLEMENT
)	
v.)	[REDACTED VERSION]
)	
CHUNGWHA PICTURE TUBES, LTD., et)	Date: December 5, 2013
al.)	Time: 9:30 a.m.
)	Dept.: 303
Defendants.)	Judge: Hon. Richard A. Kramer
)	
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CONDITIONALLY FILED UNDER SEAL

INTRODUCTION

The circumstances of this settlement are unique. The California Attorney General, asserting claims on behalf of California consumers in her *parens patriae* capacity, proposes to settle those claims with Defendant Philips while, in a federal class action, a certified class of consumers continues to litigate similar (though not identical) claims against Philips.

Objector Figone, the certified class representative asserting claims on behalf of California consumers (the “Class Claims”), is in complete agreement with the Attorney General on the most crucial question raised by the proposed settlement: The proposed settlement *cannot release* those Class Claims. *See* California’s Reply to Opposition of Objector Jeffrey Figone to Motion for Final Approval of the Philips Settlement (“California Reply”), at 10 (“the release as to Philips cannot and in fact does not cover the Class Claims”). If the Court agrees and finds that the Philips settlement does not release the Class Claims, then Mr. Figone withdraws his objection and the settlement may be approved.

Philips argues that the Court need not decide whether the settlement releases the Class Claims.¹ This position is untenable. It is *impossible* to evaluate whether the proposed settlement should be approved without determining whether the Class Claims are being extinguished. A determination of the adequacy of a settlement is predicated upon what is being provided in comparison to what it being given up. Philips’ argument that the Court may approve what is being provided now, and let the determination of what is being given up await a later day, is indefensible.

The scope of the release is ambiguous and must be interpreted by the Court now in order to determine whether the settlement is reasonable. If the Court finds that the settlement does not release the Class Claims, it can still approve the settlement.² Neither settling party disputes this. Indeed, the Attorney General implicitly agrees, since she asserts that the settlement does not release the Class Claims. If, however, the Court agrees with Philips that the settlement

¹ *See* Philips Electronics North America Corporation’s Reply In Support of Plaintiffs’ Motion for Final Approval of the Chunghwa and Philips’ Settlements (“PENAC Reply”), at 19-21.

² *See* Opposition of Objector Figone to the State of California’s Motion for Final Approval of Philips Settlement, at 8-9.

1 extinguishes the Class Claims, or that the damages claims of Californians can be left in legal
2 limbo, then the settlement is not fair, adequate or reasonable, as explained below.

3 *First*, it is now clear that the settling parties did not negotiate for the release of the Class
4 Claims. The Attorney General acknowledges that the settlement does not release the Class
5 Claims (*see* California Reply at 10). Philips further confirms that its cooperation is intended to
6 assist the prosecution of the *State's* claims, not the Class claims. *See* PENAC Reply at 8. If the
7 parties did not negotiate for a release of the Class Claims, then Philips could not (and, in fact,
8 did not) provide consideration for a release of those claims.

9 *Second*, it is undisputed that the monetary consideration provided by Philips (i.e., the
10 entire \$500,000 for settlement of both government and *parens patriae* actions) represents *less*
11 *than one percent* of the total damages caused to California consumers and sole proprietorships.
12 Philips' "meritorious defenses" do not warrant such a huge discount. The monetary
13 consideration for the settlement is totally inadequate.

14 *Finally*, the few specifics regarding the cooperation purportedly provided by Philips
15 establish that it doesn't come close to compensating for the inadequate amount of monetary
16 consideration.

17 ARGUMENT

18 I. IF THE CLASS CLAIMS ARE BEING EXTINGUISHED, THE 19 CONSIDERATION GIVEN BY PHILIPS IS INADEQUATE

20 A. The Parties Did Not Negotiate For The Release of the Class Claims

21 Significantly, the settling parties' reply papers demonstrate that they did not negotiate for
22 the release of the Class Claims. Indeed, since the Attorney General agrees that "the release as to
23 Philips cannot and in fact does not cover the Class Claims" (California Reply at 10), it follows
24 that she did not bargain to obtain consideration for the release of those claims. As for Philips, it
25 confirms that its "cooperation is designed to further the *State's* case," not the CRT Action.
26 PENAC Reply at 8 (emphasis added). If the parties did not negotiate for a release of the Class
27 Claims, then Philips could not (and, in fact, did not) provide consideration for a release of those
28 claims. Either the Class Claims are not released, or the settlement is unfair.

1 Dated: November 25, 2013

Respectfully submitted,

2
3 By:

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EXHIBIT D

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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12
13
14

15 **THE STATE OF CALIFORNIA, et al.,**

16 Plaintiffs,

17 v.

18 **CHUNGHWA PICTURE TUBES, LTD., et**
19 **al.,**

20 Defendants.

Case No. CGC -11-515786

[Related to Case No. CGC-11-515784]

**EXHIBIT B (6) TO DECLARATION OF
EMILIO VARANINI IN SUPPORT OF
MOTION AND MOTION FOR FINAL
APPROVAL OF THE CHUNGHWA AND
PHILIPS SETTLEMENTS**

Date: October 18, 2013
Time: 9:30 a.m.
Dept: 303
Judge: Richard A. Kramer

Action Filed: November 8, 2011

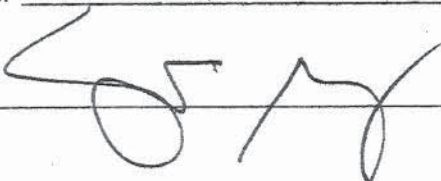
EXCLUSION FORM

I hereby assert my right to be excluded from *The State of California, et al. v. Chunghwa Picture Tubes, et al.*, San Francisco Superior Court Case No. CGC-11-515786.

Print Name: Steven Ganz*

Address Line 1: 49 Stillings Avenue

Address Line 2: San Francisco, CA 94131

Signature: 

Date: 9/5/13

****For your request(s) above to be effective, you **MUST** provide your name and address **AND** sign and date the form. Your completed form **MUST** be postmarked by September 8, 2013, and **MUST** be mailed to the following address:

Emilio E. Varanini
Deputy Attorney General
Office of the Attorney General of the State of California
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Failure to follow these instructions will make your request(s) ineffective.

*Steven Ganz, individually and on behalf of all individuals residing in the State of California, including unincorporated sole proprietors doing business in their own name.

OBJECTION FORM

Check the appropriate box or boxes below:

☐ I assert my right to object to the Settlement with **CHUNGHWA** in *The State of California, et al. v. Chunghwa Picture Tubes, et al.*, San Francisco Superior Court Case No. CGC-11-515786.

☒ I assert my right to object to the Settlement with **PHILIPS** in *The State of California, et al. v. Chunghwa Picture Tubes, et al.*, San Francisco Superior Court Case No. CGC-11-515786.

☒ I assert my right to request to intervene in *The State of California, et al. v. Chunghwa Picture Tubes, et al.*, San Francisco Superior Court Case No. CGC-11-515786.

☒ I assert my right to request to appear at the Fairness Hearing in *The State of California, et al. v. Chunghwa Picture Tubes, et al.*, San Francisco Superior Court Case No. CGC-11-515786.

Print Name: Jeffrey Figone *

Address Line 1: 370 School Road, Novato, CA 94945

Address Line 2: _____

Signature: 

Date: September 5, 2013

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* JEFFREY FIGONE, INDIVIDUALLY AND ON BEHALF OF ALL
INDIVIDUALS RESIDING IN THE STATE OF CALIFORNIA,
INCLUDING UNINCORPORATED SOLE PROPRIETORS DOING
BUSINESS IN THEIR OWN NAME,

Law Office of Joseph M. Patane
2280 Union Street
San Francisco, CA 94123

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C4083619

EMILIO E. VARANINI
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL - STATE OF CAL
455 GOLDEN GATE AVE, SUITE 11000
SAN FRANCISCO CA 94102

94102700450



EXCLUSION FORM

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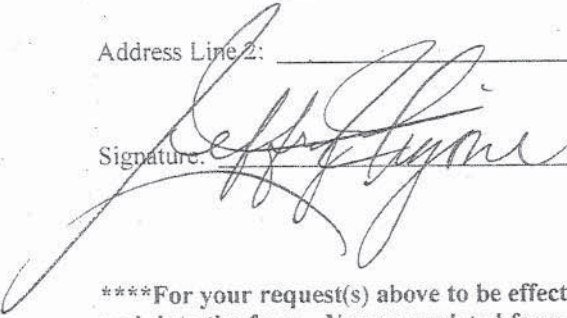
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BUSINESS IN THEIR OWN NAME,

EXHIBIT E

1
2 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

3 IN AND FOR THE COUNTY OF SAN FRANCISCO

4 BEFORE THE HONORABLE RICHARD A. KRAMER, JUDGE

5 DEPARTMENT NO. 303

6 ---oOo---

7 THE STATE OF CALIFORNIA,

NO. CGC-11-515786

8 PLAINTIFF,

9 vs.

10 CHUNGHWA PICTURE TUBES,
11 LTD,

12 DEFENDANT.
13 /

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 CIVIC CENTER COURTHOUSE
16 SAN FRANCISCO, CALIFORNIA

17 DECEMBER 5TH, 2013
18
19
20
21
22
23

24 REPORTED BY: BRENDA L. CROW, RPR

25 CSR NO. 10503

1 I'm using a term that's very ambiguous. I am doing that on
2 purpose. Even Mr. Alioto would agree that if the settlement
3 of this case does not constitute a release of claims by
4 class plaintiffs in the federal action, if that were the
5 case, then he's got no problem with the release. So that
6 would mean that his calculation -- he's got no problem with
7 the settlement. That means that his calculation would be
8 unaffected here. As a matter of fact, he would be quite
9 satisfied if I simply made that finding and then got
10 everybody out of here. So if that were the case then the
11 starting point for the valuation wouldn't be anywhere near
12 the piece of paper that was handed to me with the total
13 overcharge -- I won't call it a calculation -- opinion.
14 That number would go to zero, maybe, or 800,000, something,
15 but it wouldn't be of any concern to the objector.

16 If on the other hand, the release does apply to
17 these claims then, perhaps, Mr. Alioto is onto something
18 here, and the answer is I have no idea what the scope of
19 that release is, and it's impossible for me to figure it
20 out, and if then that is a necessary step to make a Kullar
21 calculation, it can't be done. Why do I have no idea? Why
22 is it impossible? Because, first, the question being posed
23 is how does this release apply to something that's never
24 happened yet, the structure of which, the wording of which
25 has yet to come into existence? So I can't apply language

1 to something that doesn't exist. There might be a
2 settlement. There might be a judgment. There might be
3 components or wordings regarding those matters that may be
4 something that would create an ambiguity in the language of
5 settlement, and I can't anticipate that now. That is, also,
6 a mixed question of fact and law because the legal question
7 would be what is the effect of a Parens Patriae release on
8 an individual claim in a class basis? I don't know.
9 Nobody's briefed that, but you don't have to. There is no
10 law on that.

11 What about the opt-out, the effect of a purported
12 opt-out on behalf of a class and the argument, perhaps by
13 the litigant here, that that's not effective under the
14 Parens Patriae Statute? I'm not going to determine that
15 now. It's a hypothetical question for somebody else to
16 figure out, not for me to figure out, and, lastly, some of
17 this might have to do with federal law regarding standing,
18 regarding class matters or anything else that could creep
19 into whatever is going to happen next.

20 I say this for two reasons. Then I am not going to
21 give a statement one way or the other as to the impact of
22 this settlement on Mr. Alioto's case. I just don't know,
23 and I can't do so, but, secondly, that impacts the Kullar
24 calculation. I can't do what Mr. Alioto wants as the first
25 step because the starting point depends on whether the